

Remarks/Arguments

Reconsideration of this application is requested.

Extension of Time

A request for a three month extension of the period for response to the Office Action mailed on January 22, 2009 is enclosed. The extended period for response expires on July 22, 2009.

Claim Status

Claims 1-16 are pending. Since no claims are added, amended or canceled, no listing of claims is required under 37 CFR 1.121.

Claim Rejections – 35 USC 112

Claims 1, 2, 6, 7 and 11-13 are rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. In particular, the Action asserts that “an initial transmission rate” does not have explicit support in the specification. In response, applicant traverses the rejections.

MPEP 2163 requires that the Office bear the initial burden of presenting a preponderance of evidence to explain why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims. Importantly, there is no *in haec verba* requirement in order for the disclosure to satisfy the description requirement (MPEP 2163.02). The written description requirement can be satisfied through express, implicit or inherent disclosure. Therefore, applicant submits that the feature of “an initial transmission rate” complies with the written description requirement.

In this regard, applicant submits that persons skilled in the art would readily recognize applicant’s possession of the claimed initial transmission rate based on at least applicant’s FIG. 8 and paragraphs 0010, 0023 and 0131. Moreover, applicant notes that page 3 of the Action asserts that an “initial transmission rate is not described in the specification,” while page 2 of the Action asserts that paragraphs 0002-0005 of the specification “admits an initial transmission rate.” In view of these contradictory interpretations, it is unclear whether the Office believes the

feature of an initial transmission rate is or is not taught by the specification. Clarification is respectfully requested.

For these reasons, the rejections under 35 USC 112, first paragraph, should be withdrawn.

Claim Rejections – 35 USC 103

Claims 1-16 are rejected under 35 USC 103(a) as obvious over Uchida (US 6,745,049) in view of Hashem (US 6,701,129). In response, applicant traverses the rejections.

The present invention is directed to a wireless communication system that performs data communications, and more particularly, to a wireless communication system in which the transmission rate in a radio zone can be changed (applicant's published specification; paragraph 0001). An initial transmission rate is determined so as to advantageously provide communication at a high transmission rate from the start of the communication (paragraph 0035).

Claim 1 is as follows:

A wireless communication system configured from a wireless base station and a wireless communication terminal, wherein a wireless communication line is set between the wireless base station and the wireless communication terminal,

the wireless base station comprises:

a wireless base station transmission rate notify section that notifies the wireless communication terminal of an initial transmission rate that enables to be supported by the wireless base station on the wireless communication line from the wireless communication terminal to the wireless base station, and

the wireless communication terminal comprises:

a storage section that stores an initial transmission rate required by the wireless communication terminal on the wireless communication line from the wireless communication terminal to the wireless base station; and

an initial transmission rate determination section that determines an initial transmission rate on the wireless communication line from the wireless communication terminal to the wireless base station based on a result of comparing the initial transmission rate notified from the wireless base station with the initial transmission rate stored in the storage section.

With respect to the claimed feature of an "initial transmission rate determination section", FIG. 7 of Uchida is cited as teaching a rate change request between elements such as the mobile station and database. However, a simple rate change request does not correspond to an initial transmission rate determined based on the comparison between the notified and stored initial transmission rate since the basis for Uchida's rate change is not disclosed.

Furthermore, col. 9, lines 59-67 states that "Reference numerals 27, 28 and 29 designate mobile switching centers which receive control information...and set a transmission rate of communication data transmitted/received between the mobile station 16 and so on and the database 11 and the like, respectively." Thus, the mobile switching centers set the transmission rate between mobile station 16 and database 11. However, the feature of mobile switching centers 27-29 connected to a wired PSTN does not correspond to either a wireless base station or a wireless communication terminal as required by claim 1. The present invention requires the wireless communication terminal to determine the initial transmission rate and not a wired mobile switching center. The determination of a transmission rate by a wired mobile switching center has no correspondence to a comparison by a wireless communication terminal of initial transmission rates.

Furthermore, a communication apparatus is defined in Uchida as database 11 (col. 9, line 40). In this regard, Uchida teaches "a mobile switching center changes a transmission rate of communication data transmitted from a mobile station to a communication apparatus in accordance with a request from the communication apparatus" (col. 2, lines 15-18). Therefore, Uchida merely teaches a

mobile switching center 27-29 changing a transmission rate between the database and mobile station 16-22 based on a database 11 request and not a base station 23-26 notifying the mobile station 16-22 of an initial transmission rate. In other words, a mere change in transmission rate between elements 27-29 and 11 fails to teach or suggest notification between elements 23-26 and 16-22.

The “Response to Amendment” section of the Action asserts that “any communication system with variable transmission rate capability has an initial transmission rate determined.” The Office thus appears to have constructively taken Official Notice in rejecting claims 1-16. Applicant disagrees and traverses the Official Notice.

As stated in MPEP 2144.03, “If Official Notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such a notice must be clear and unmistakable.” Applicant submits that the Office Action has not set forth a technical line of reasoning to support the taking of a fact as common knowledge. Furthermore, applicant notes that “assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) (“[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory.”); *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973).

Moreover, even if the basis for the Official Notice is provided, the common knowledge asserted does not cover the claim in full detail to render the claim obvious. In particular, the claimed feature of “determines an initial transmission rate on the wireless communication line from the wireless communication terminal to the wireless base station *based on a result of comparing the initial transmission rate notified from the wireless base station with the initial transmission rate stored*

in the storage section" (emphasis added) is not asserted to be old and well known common knowledge. Therefore, the asserted common knowledge fails to fully and adequately account for the deficiencies of Uchida. Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983) (MPEP 2141.02).

Applicant further submits that the Office's assertion is not old and well known in the art since applicant's published specification teaches in paragraph 0010 that conventionally, a communication terminal at start time sets the transmission rate to the lowest value and not based on a comparison. Thus, applicant's inventive wireless communication system was not well known.

Hashem, which is cited as teaching a wireless terminal with a storage section where at least one transmission parameter is stored, does not remedy the deficiencies of Uchida and is not relied upon by the Office for such.

Independent claims 2, 6, 7 and 11-13 recite similar features as discussed above with respect to claim 1 and are allowable for at least the same reasons. Dependent claims 3-5, 8-10 and 14-16 recite additional features not disclosed or suggested by the references of record. For example, claims 5 and 10 require the retransmission of a request of a lower transmission rate "when the determination result from the wireless base station section shows that the transmission rate does not enable to be supported." At best, Uchida merely teaches a rate change request (FIG. 7). A determination of whether a transmission rate is supported is not disclosed.

For at least these reasons, the rejections under 35 USC 103 should be withdrawn.

Conclusion

This application is now believed to be in condition for allowance. The Examiner is invited to telephone the undersigned to resolve any issues that remain

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after entry of this amendment. Any fees due with this response may be charged to our Deposit Account No. 50-1314.

Respectfully submitted,
HOGAN & HARTSON L.L.P.

Date: July 21, 2009

By: _____

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